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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 JACK K. STEIN,) CASE NO. C06-1047-MJP-MAT
08 Plaintiff,)
09 v.) ORDER TO SHOW CAUSE
10 KENNETH QUINN,)
11 Defendant.)
12

13 Plaintiff is a Washington state prisoner proceeding *pro se* and *in forma pauperis* in this
14 action brought pursuant to 42 U.S.C. § 1983. Plaintiff alleges in his complaint and in a separate
15 motion for preliminary injunction that prison officials removed from his cell eleven boxes of legal
16 materials without proper justification. On October 27, 2006, the Honorable Marsha J. Pechman
17 remanded this case to the undersigned United States Magistrate Judge “to determine whether this
18 action should be stayed or whether it should proceed because state proceedings have been
19 completed.” (Dkt. #14 at 4). Accordingly, the court does hereby find and ORDER as follows:

20 (1) Under *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004) (en banc), the
21 present action should be stayed if state proceedings are ongoing. As Judge Pechman noted, “it
22 is not entirely clear from the records if the state proceedings have indeed ended.” (Dkt. #14 at 2).

01 It appears that plaintiff still has one action pending in the Washington Court of Appeals (Case No.
02 587684). Therefore, within 21 days from the date of this Order, plaintiff shall SHOW CAUSE in
03 writing why this action should not be stayed pending the completion of state court proceedings.
04 In order to demonstrate that state court proceedings have ended, plaintiff shall file a copy of any
05 ruling, order, or mandate from the state court that reflects that proceedings have terminated.

06 (2) If plaintiff makes the showing described above, allowing this case is to proceed,
07 plaintiff is advised that, upon further order of the court, he will be required to amend his pleadings
08 to correct the following deficiencies in his complaint and motion for a preliminary injunction:

09 (A) In his complaint and in his motion for preliminary injunction, plaintiff requests
10 that the court direct defendants to return the eleven boxes of legal materials that they allegedly
11 confiscated from his cell. However, this request for relief is inconsistent with plaintiff's assertion
12 elsewhere that the boxes have already been destroyed. (Dkt. #7 at 17; Dkt. #13 at 3). Indeed,
13 plaintiff attaches an exhibit to one of his pleadings that appears to show unequivocally that the
14 boxes were destroyed on April 7, 2006. (Dkt. #7, Ex. 17). Consequently, it appears that
15 plaintiff's request for the return of the boxes is moot.

16 (B) Plaintiff also seeks damages for the loss of the legal materials contained in the
17 boxes. He states in his motion for a preliminary injunction that "[w]hile [plaintiff] is not required
18 to show prejudice to prevail, [he] suffered prejudice because he did not have access to facts,
19 documents, and transcripts to use in pleadings before State Court and pleadings before the Federal
20 District Court." (Dkt. #7 at 17). Plaintiff is advised that contrary to his assertion that he need not
21 show prejudice, the Supreme Court has held that a prisoner who claims that prison officials have
22 denied him access to the courts, must show an "actual injury" stemming from the alleged violation.

01 *See Lewis v. Casey*, 518 U.S. 343, 349 (1996). “Actual injury” is a jurisdictional requirement that
02 flows from standing doctrine and may not be waived. *Id.* Absent such a showing, plaintiff’s claim
03 for his boxes would simply be a claim for lost or damaged property, which would not rise to the
04 level of a constitutional violation. *See Zinerman v. Burch*, 494 U.S. 113, 129-32 (1990) (holding
05 that where a prisoner alleges the deprivation of a property interest, the prisoner cannot state a
06 constitutional claim where the state provides an adequate post-deprivation remedy).

07 (C) In his motion for preliminary injunction, plaintiff refers in a disparaging
08 manner to a prison official he identifies as “Prince Williams.” Specifically, plaintiff calls Mr.
09 Williams “an EVIL and dishonest black man. . . .” (Dkt. #7 at 6) (emphasis in original). Plaintiff
10 is advised that such abusive language has no place in a court of law and violates General Rule 9
11 of the Local Rules, which dictates that litigation in this district “must be free from prejudice and
12 bias in any form.” Local Rule GR 9, W.D. Washington. Plaintiff is warned that any future
13 remarks of this nature will result in the imposition of sanctions against him, which may include
14 dismissal of this action.

15 (3) The Clerk shall send a copy of this Order to plaintiff and to Judge Pechman.

16 DATED this 31st day of October, 2006.

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18 Mary Alice Theiler
19 United States Magistrate Judge
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